



October 26, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
 Acting as the governing body of Water Environment Services
 Clackamas County

Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Easements and Fee Property and Authorizing Good Faith Negotiations and Condemnation Actions with WES for the Tri-City Water Resource Recovery Facility Outfall Project. Total value is \$121,100. Funding through WES Sanitary Sewer Construction Fund. No County General Funds are involved.

Previous Board Action/Review	Presented at Issues – October 24, 2023.		
Performance Clackamas	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invest in our national resources. 		
Counsel Review	Yes	Procurement Review	Yes
Contact Person	Jeff Stallard	Contact Phone	503-278-2311

EXECUTIVE SUMMARY: WES has contracted separately, with Board approval, for the design and construction of a new outfall from our Tri-City Water Resource Recovery Facility. In order to construct the improvements as designed, permanent and temporary easements and fee acquisitions are required. The Outfall Project is expected to impact two properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 451, ORS Chapter 190, and ORS Chapter 35 to acquire the needed easements and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in ORS Chapter 35, a Resolution of Necessity is required before offers are made for easements and fee property.

The project design team has collected and analyzed data sufficient to choose an alternative and advance the design of the Outfall Project. The Outfall Project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least impact to private property. The design has progressed through WES'

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project development procedures and the final legal descriptions required for acquisition of the needed easements from two properties affected by the project are being developed.

WES shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

The resolution directs WES staff to proceed with good faith negotiations for the acquisition of the needed property rights and to utilize the expertise of authorized real estate appraisers and other such experts to assist in the acquisition process. The resolution further requires the Director of WES to notify the Board if the exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a Condemnation Action on behalf of WES.

RECOMMENDATION: Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Resolution of Necessity and Purpose authorizing the acquisition of necessary easements, by good faith negotiation if possible, or condemnation, if necessary.

Respectfully submitted,



Greg Geist
Director, WES

Attachment: Resolution of Necessity

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring the Necessity and Purpose for Acquisition of Easements and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions by Water Environment Services for the Tri-City Water Resource Recovery Facility Outfall Project



Resolution No. _____

Page 1 of 2

This matter comes before the Board of County Commissioners of Clackamas County, Oregon acting as the governing body of Water Environment Services (the "Board") at its regularly scheduled meeting on October 23, 2023;

It appearing to the Board that the Tri-City Water Resource Recovery Facility Outfall Project ("the Project") will install a new 90-inch outfall pipe from the Tri-City Water Resource Recovery Facility to the Willamette River; is consistent with the powers and purposes of Water Environment Services; and is necessary for public use and the continued growth, safety and welfare of the community;

It further appearing that the Board has the responsibility of providing sufficient wastewater infrastructure for protecting public health, stewardship of healthy watersheds, and water resource recovery;

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of wastewater infrastructure such that property damage is minimized, and water quality is safeguarded;

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury;

It further appearing to the Board that easements within the boundaries described in the attached Exhibits for two properties (the "Exhibits") are a necessary part of the Project; and

It further appearing that the Board has authority under ORS Chapter 451, ORS Chapter 190, and ORS Chapter 35 to acquire easements and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings;

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that Water Environment Services ("the District"), in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary easements and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring the Necessity and Purpose for Acquisition of Easements and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Tri-City Water Resource Recovery Facility Outfall Project



Resolution No. _____

Page 2 of 2

IT IS FURTHER RESOLVED THAT:

1) The District be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified in the Exhibits. In so doing, the District is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to assist staff with the acquisition process; and,

2) If the Director of the District (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the easements and fee property required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending the Exhibits; and,

3) It is the intention of the Board that the required easements and fee property be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Clackamas County Office of County Counsel is authorized to file complaints of condemnation with the circuit court of Clackamas County and take such other steps as it determines necessary for the immediate possession of required easements and fee property and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts, and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2023.

Water Environment Services

Tootie Smith, Chair

Recording Secretary

EXHIBIT "A"
SHEET 1 OF 2
PERMANENT PUBLIC UTILITY EASEMENT
BCORE MF EDGEWATER OWNER LLC
TAX LOTS 2900
MAP 2-2E-29

DRAFT

(PROVISIONAL FOR DISCUSSION PURPOSES ONLY)


A TRACT OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN STATUTORY SPECIAL WARRANTY DEED TO BCORE MF EDGEWATER OWNER, LLC, RECORDED AUGUST 23, 2019, AS DOCUMENT NO. 2019-050675, CLACKAMAS COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT 5/8 INCH IRON ROD FOUND AT THE SOUTHWEST CORNER OF LOT 2, PLAT OF "CLACKAMETTE COVE", PLAT NO. 4289, CLACKAMAS COUNTY PLAT RECORDS; THENCE ALONG THE SOUTH LINE OF SAID LOT 2 THE FOLLOWING TWO (2) COURSES N.66°01'00"E., 188.62 FEET; THENCE N.58°39'01"E., 108.87 FEET TO THE TRUE POINT OF BEGINNING OF THAT TRACT TO BE DESCRIBED; THENCE 70.47 FEET ALONG THE ARC OF 990.00 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE NORTHWEST, THROUGH A CENTRAL ANGLE OF 04°04'41", THE CHORD BEARS N.40°16'26"E., 70.45 FEET; THENCE N.38°13'40"E., 163.75 FEET TO THE WEST LINE OF THAT TRACT DESCRIBED IN DEED OF DEDICATION TO THE CITY OF OREGON CITY, RECORDED JULY 26, 2017 AS DOCUMENT NO. 2017-05039, CLACKAMAS COUNTY DEED RECORDS; THENCE ALONG THE EAST LINE OF SAID DEDICATION TRACT S.27°31'21"W., 61.22 FEET TO 1-INCH DIAMETER BRASS DISK STAMPED "PIONEER DESIGN"; THENCE S.38°57'00"W., 133.23 FEET TO THE SOUTHEASTERLY LINE OF THE AFOREMENTIONED LOT 2, "CLACKAMETTE COVE"; THENCE 6.82 FEET ALONG THE ARC OF A 2819.79 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE NORTHWEST, THROUGH A CENTRAL ANGLE OF 00°08'19", THE CHORD BEARS S.34°30'52"W., 6.82 FEET; THENCE S.58°39'01"W., 36.52 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 2001 SQUARE FEET

BASIS OF BEARINGS: OREGON COORDINATE
REFERENCE SYSTEM, PORTLAND ZONE NAD 83 (2011)
EPOCH 2010.00.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

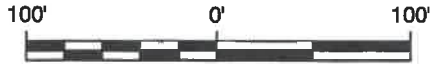
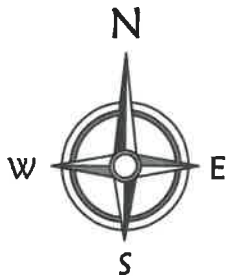


OREGON
JULY 13, 2021
DARREN E HAMMACK
57208

DATE OF SIGNATURE: 8/22/23

EXPIRES: 06/30/2025





SCALE: 1" = 100'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Darren Hammack
OREGON
JULY 13, 2021
DARREN E HAMMACK
57208

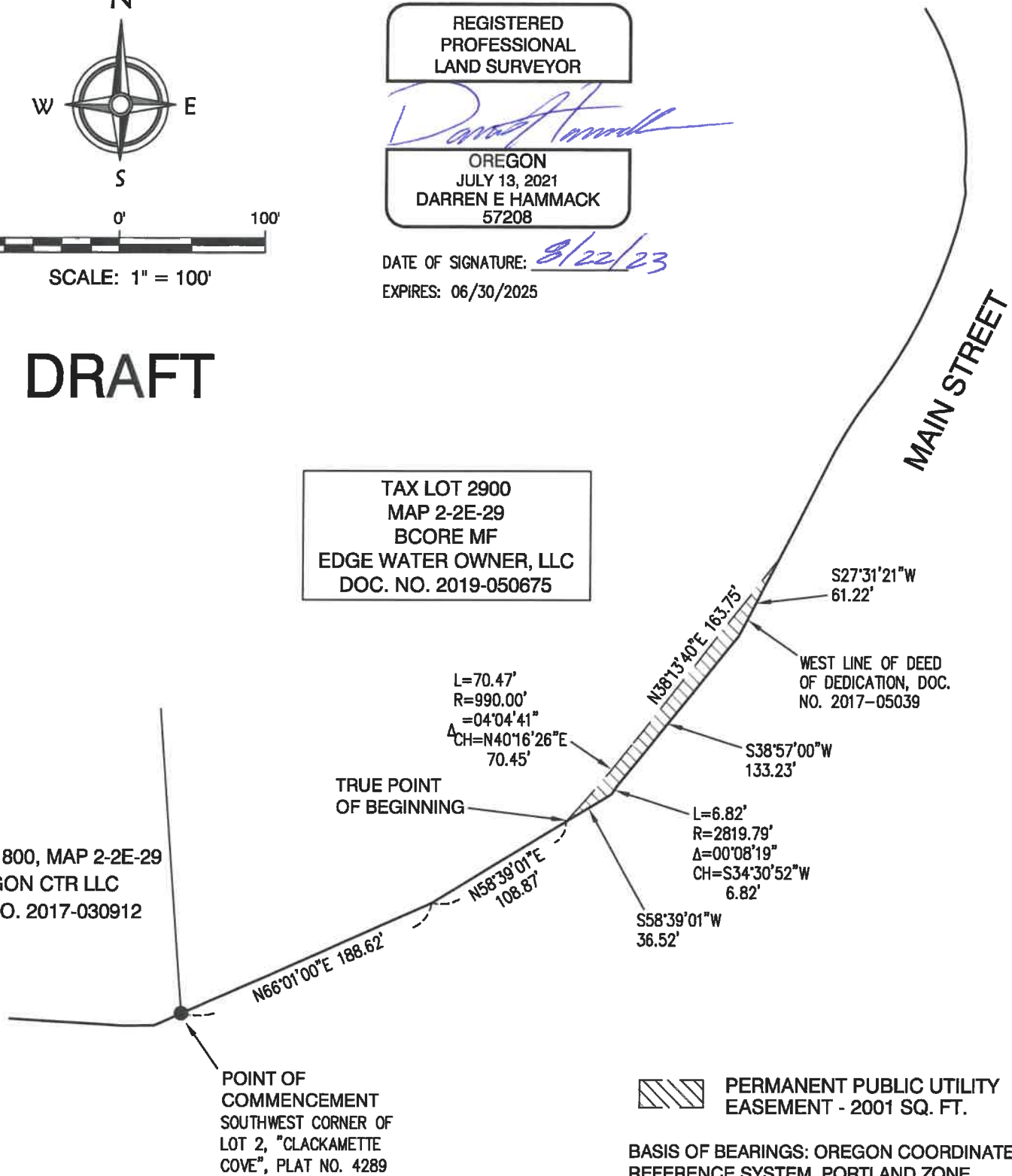
DATE OF SIGNATURE: *8/22/23*
EXPIRES: 06/30/2025

DRAFT

TAX LOT 2900
MAP 2-2E-29
BCORE MF
EDGE WATER OWNER, LLC
DOC. NO. 2019-050675

MAIN STREET

TAX LOT 1800, MAP 2-2E-29
OREGON CTR LLC
DOC. NO. 2017-030912



PERMANENT PUBLIC UTILITY
EASEMENT - 2001 SQ. FT.

BASIS OF BEARINGS: OREGON COORDINATE
REFERENCE SYSTEM, PORTLAND ZONE,
NAD '83 (2011), EPOCH 2010.00

EXHIBIT "A"

8343 Edge Water Easements.dwg

MPASS Land Surveyors
4107 SE International Way, Suite 705
Milwaukie, Oregon 97222 503-653-9093

LOCATED IN THE NW 1/4 OF SECTION 29,
T.2S., R.2E., W.M.
CLACKAMAS COUNTY, OREGON

2

2

EXHIBIT "A"
SHEET 1 OF 3
PERMANENT PUBLIC UTILITY EASEMENT
CHERRY CITY HOLDINGS LLC
TAX LOTS 1507, 1506
MAP 2-2E-29

DRAFT

A TRACT OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, BEING A PORTION THAT TRACT OF LAND DESCRIBED IN BARGAIN AND SALE DEED TO CHERRY CITY HOLDING L.L.C., RECORDED NOVEMBER 18, 2009 AS DOCUMENT NUMBERS 2009-080116, CLACKAMAS COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3-1/4 INCH BRASS DISK IN A MONUMENT WELL, FOUND AT THE ONE QUARTER SECTION CORNER COMMON TO SECTIONS 19 AND 20, T. 2S., R.2E., W.M.; THENCE S.36°38'52"W., 1661.58 FEET TO A POINT ON THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED IN SAID DEED DOCUMENT NO. 2009-080116 AND THE TRUE POINT OF BEGINNING OF THAT TRACT TO BE DESCRIBED; THENCE LEAVING SAID NORTH LINE 67.90 FEET ALONG THE ARC OF 990.00 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 03°55'46", THE CHORD BEARS S.29°39'23"W., 67.88 FEET; THENCE S.31°53'15"W., 292.12 FEET; THENCE 63.14 FEET ALONG THE ARC OF A 1010.14 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 03°34'55", THE CHORD BEARS S.30°00'22"W., 63.13 FEET; THENCE S.28°12'54"W., 28.66 FEET; THENCE 63.79 FEET ALONG THE ARC OF A 990.00 FOOT RADIUS, NON TANGENT CURVE, CONCAVE NORTHWEST, THROUGH A CENTRAL ANGLE OF 03°41'30", THE CHORD BEARS S.30°03'39"W, 63.78 FEET TO A POINT ON THE WESTERLY LINE OF THAT TRACT THAT TRACT OF LAND CONVEYED IN BARGAIN AND SALE DEED TO WATER ENVIRONMENT SERVICES IN DEED DOCUMENT NUMBER 2017-054620, RECORDED AUGUST 10, 2017 (POINT A); THENCE ALONG SAID WESTERLY LINE N.36°00'28"E., 98.47 FEET; THENCE N.29°51'01"E., 417.56 FEET TO THE NORTH LINE OF SAID DEED DOUCUMENT NO. 2009-080116: THENCE ALONG SAID NORTH LINE N.67°52'09"W., 0.83 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 2886 SQUARE FEET, MORE OR LESS.

TOGETHER WITH THE FOLLOWING DESCRIBED TRACT OF LAND. COMMENCING AT POINT "A" AS DESCRIBED ABOVE; THENCE ALONG THE WESTERLY LINE OF THAT TRACT OF LAND DESCRIBED IN THE AFOREMENTIONED BARGAIN AND SALE DEED TO WATER ENVIRONMENT SERVICES, DOCUMENT NUMBER 2017-054620, S.36°00'28"W., 141.70 FEET TO THE TRUE POINT OF BEGINNING OF THAT TRACT TO BE DESCRIBED; THENCE LEAVING SAID WESTERLY LINE S.39°54'26"W., 89.34 FEET; THENCE 31.81 FEET ALONG THE ARC OF A 82.23 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, CHORD BEARS N.47°05'20"E., 31.61 FEET; THENCE N.36°00'28"E., 58.11 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 209 SQUARE FEET, MORE OR LESS.



EXHIBIT "A"
SHEET 2 OF 3
TEMPORARY CONSTRUCTION EASEMENT
CHERRY CITY HOLDINGS LLC
TAX LOTS 1507, 1506
MAP 2-2E-29

A TRACT OF LAND LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, BEING A PORTION OF THAT TRACT OF LAND DESCRIBED IN BARGAIN AND SALE DEED TO CHERRY CITY HOLDING L.L.C., RECORDED NOVEMBER 18, 2009 AS DOCUMENT NUMBERS 2009-080116, CLACKAMAS COUNTY DEED RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3-1/4 INCH BRASS DISK IN A MONUMENT WELL, FOUND AT THE ONE QUARTER SECTION CORNER COMMON TO SECTIONS 19 AND 20, T. 2S., R.2E., W.M.; THENCE S.36°38'52"W., 1661.58 FEET TO A POINT ON THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED IN SAID DEED DOCUMENT NO. 2009-080116 AND THE TRUE POINT OF BEGINNING OF THAT TRACT TO BE DESCRIBED; THENCE LEAVING SAID NORTH LINE 67.90 FEET ALONG THE ARC OF 990.00 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 03°55'46", THE CHORD BEARS S.29°39'23"W., 67.88 FEET; THENCE S.31°53'15"E., 292.12 FEET; THENCE 63.14 FEET ALONG THE ARC OF A 1010.00 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE SOUTHEAST, THROUGH A CENTRAL ANGLE OF 03°34'55", THE CHORD BEARS S.30°00'22"W., 63.13 FEET; THENCE S.28°12'54"W., 28.66 FEET; THENCE 63.79 FEET ALONG THE ARC OF A 990.00 FOOT RADIUS, NON TANGENT CURVE, CONCAVE NORTHWEST, THROUGH A CENTRAL ANGLE OF 03°41'30", THE CHORD BEARS S.30°03'39"W., 63.78 FEET TO THE WEST LINE OF THAT TRACT OF LAND CONVEYED IN BARGAIN AND SALE DEED TO WATER ENVIRONMENT SERVICES IN DEED DOCUMENT NO. 2017-054620, RECORDED AUGUST 10, 2017; THENCE ALONG SAID WEST LINE S.36°00'28"W., 141.70 FEET; THENCE LEAVING SAID WESTERLY LINE S.39°54'26"W., 89.34 FEET; THENCE 77.46 FEET ALONG THE ARC OF A 82.23 FOOT RADIUS, NON TANGENT CURVE, CONCAVE NORTH, THROUGH A CENTRAL ANGLE OF 53°58'18", THE CHORD BEARS S.85°09'21"W., 74.63 FEET TO THE WEST LINE OF AGNESS AVENUE; THENCE LEAVING SAID WEST LINE N.48°21'05"E., 228.16 FEET; THENCE S.68°08'51"E., 14.18 FEET; THENCE N.36°00'28"E., 3.04 FEET; THENCE N.21°54'25"E., 61.83 FEET; THENCE N.28°54'49"E., 119.10 FEET; THENCE N.31°24'27"E., 324.15 FEET; THENCE N.31°44'26"E., 58.97 FEET TO THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED IN SAID DEED DOCUMENT NUMBER 2009-080116; THENCE S.67°52'09"E., 15.00 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 15398 SQUARE FEET, MORE OR LESS.

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

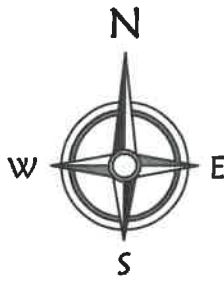


**OREGON
JULY 13, 2021
DARREN E HAMMACK
57208**

DATE OF SIGNATURE: 8/15/23

EXPIRES: 06/30/2025





SCALE: 1" = 100'

TEMPORARY CONSTRUCTION EASEMENT - 15,398 SQ. FT.

PERMANENT PUBLIC UTILITY - 3095 SQ. FT.

BASIS OF BEARINGS: OREGON COORDINATE REFERENCE SYSTEM, PORTLAND ZONE, NAD '83 (2011), EPOCH 2010.00

TAX LOT 1507
MAP 2-2E-29
CHERRY CITY HOLDING LLC
DOC. NO. 2009-080116

TAX LOT 1506
MAP 2-2E-29
CHERRY CITY HOLDING LLC
DOC. NO. 2009-080116

AGNES AVENUE

I 205

ONE QUARTER SECTION CORNER COMMON TO SECTIONS 18 AND 19, T.2S., R.2E., W.M.

POINT OF COMMENCEMENT ONE QUARTER SECTION CORNER COMMON TO SECTIONS 19 AND 20, T.2S., R.2E., W.M.

TRUE POINT OF BEGINNING

S32°58'16"E 7975.47'

S36°38'52"W 1661.58'

S67°52'09"E 15.00'
N31°44'26"E 58.97'

N67°52'09"W 0.83'
L=67.90'
R=990.00'
Δ=03°55'46"
CH=S29°39'23"W 67.88'

N31°24'27"E 324.15'

WATER ENVIRONMENT SERVICE
DOC. NO. 2017-054620
TAX LOT 1504, MAP 2-2E-29

N29°51'01"E 417.56'

L=63.14'
R=1010.00'
Δ=03°34'55"
CH=S30°00'22"W 63.13'

S28°12'54"W 28.66'

L=63.79'
R=990.00'
Δ=03°41'30"
CH=S30°03'39"W 63.78'

N28°54'49"E 119.10'
N21°54'25"E 61.83'
N36°00'28"E 3.04'
S68°08'51"E 14.18'
N48°21'05"E 228.16'

POINT A
S36°00'28"W 141.70'

L=77.46'
R=82.23'
Δ=53°58'18"
CH=S85°09'21"W 74.63'

N36°00'28"E 98.47'
N36°00'28"E 58.11'
S39°54'26"W 89.34'
L=31.81'
R=82.23'
Δ=22°09'44"
CH=N47°05'20"E 31.61'

DRAFT

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
JULY 13, 2021
DARREN E HAMMACK
57208

DATE OF SIGNATURE: 8/15/23
EXPIRES: 06/30/2025

8343 Cherry City Easements.dwg

EXHIBIT "A"

COMPASS Land Surveyors
4107 SE International Way, Suite 705
Milwaukie, Oregon 97222 503-653-9093

LOCATED IN THE NW 1/4 OF SECTION 29,
T.2S., R.2E., W.M.
CLACKAMAS COUNTY, OREGON

3

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